

U. S. PTO Customer No. 25280

Case #5682A

REMARKS35 USC Section 103 Rejections:

Claims 1-3, 5-8 and 11 were rejected under 35 USC Section 103(a) as unpatentable over Bullock et al. (USPN 6,251,210).

The Examiner submits that Bullock et al. disclose a treated textile fabric comprising two chemical treatments with the primary comprising at least about 5 weight percent of a fluorochemical and the secondary comprising the same composition as the primary except the fluorochemical comprises at least about 4 weight percent of the composition (Abstract). The Examiner takes the position that less than about 4 weight percent (Applicant) and at least about 4 weight percent (Bullock et al.) both extend beyond the value of 4 percent: 4.1% for Applicant and 3.9% for Bullock et al. Therefore, the Examiner believes the applied art anticipates the instantly claimed fluorochemical level. The primary treatment may also contain one or more antimicrobial agents, fluoropolymers, and cross-linked resins (col. 4, lines 42-44, col. 12, lines 7-31). The fluorochemicals provide water repellence and stain resistance (col. 12, lines 9-14). The Examiner further contends that Bullock et al. teach that the preferred latex component of the primary fluorochemical treatment may comprise acrylate copolymers and terpolymers of methylacrylate (col. 11, lines 17-49). The applied article teaches the use of unblocked poly-isocyanate (col. 1, lines 44-66).

The Examiner further contends, with regard to claims 5 and 6, that the anti-microbial agent may be "any substance or combination of substances that kills or prevents the growth of a microorganism and includes antibiotics, antifungals, antiviral, and antialgal agents which includes triclosan and Zinc OmadineTM (col. 11, lines 50-59). The Examiner also states that preferred crosslinking resins and the associated crosslinkers of the applied reference are disclosed at column 12, lines 25-41. The Examiner also states that claim 11 is rejected as the secondary coating is to be applied to only one side of the fabric (Abstract).

The Examiner also contends that the applied reference is silent as to the hydrophobicity of the disclosed crosslinking components, however as the applied invention disclosed the instantly claimed crosslinking agent (derivative of an isocyanate) and the article is directed for use as a stain and water repellent textile fabric, it is reasonable to presume that the crosslinking agents taught by Bullock et al. are hydrophobic.

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Applicants respectfully disagree and submit that the rejection fails to establish a *prima facie* showing of obviousness, since the reference fails to disclose expressly claimed elements or limitations of Applicants' claimed invention. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and MPEP 2143.03. More specifically, Bullock et al. fail to teach a hydrophobic crosslinking agent as claimed by Applicants. Rather, Bullock et al. teach crosslinking resins such as melamine/formaldehyde and phenol/formaldehydes (col. 12, lines 25-33). Applicants respectfully contend that these crosslinking resins are hydrophilic in nature. Applicants have submitted herewith Exhibit A (2 pages) as evidence that melamine/formaldehyde resins are hydrophilic in nature. Applicants have also submitted herewith Exhibit B (2 pages) as evidence that phenol/formaldehyde resins are hydrophilic in nature.

Additionally, the Examiner cites the disclosure by Bullock et al. of unblocked poly-isocyanate compounds (col. 1, lines 44-66). While Bullock et al. mentions these compounds in their discussion of the prior art, there is no mention of the use of these unblocked poly-isocyanate compounds in combination with a fluorochemical-containing soil release component, as claimed by Applicants. Rather, the prior art discussion by Bullock et al. discloses the use of these unblocked poly-isocyanates in combination with wax-based, organic solvent-borne systems. Thus, Applicants continue to maintain their position that Bullock et al. fail disclose the use of hydrophobic crosslinking agents, such as isocyanate compounds as one example, as claimed by Applicants.

Finally, Applicants respectfully disagree with the Examiner's contention that Bullock et al. teach applying the composition to a substrate in an amount equal to about 4.5%. To the contrary, Bullock et al. state the following (column 17, lines 16-18):

The fluorochemical textile treating agent preferably comprises about 6% to about 12% by weight of the primary treatment composition, and more preferably 10% by weight. It is noteworthy that the amount of fluorochemical treating agent used in the primary treatment composition is considerably higher than amounts traditionally used for treating upholstery fabric to render it stain resistant.

In contrast, Applicants claim a treating composition that is applied to a textile substrate in a concentration of less than about 4 weight percent of the fluorochemical-containing soil release component based upon the weight of the treating composition. Applicants respectfully submit that these differences again illustrate that Bullock et al. fails to disclose expressly claimed elements of Applicants claimed invention.

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Thus, for the reasons set forth above, Applicants respectfully submit that this rejection lacks a *prima facie* showing of obviousness thereby resulting in an improper rejection of the claims. As such, reconsideration and withdrawal of this rejection is earnestly requested.

Claim 10 was rejected under 35 USC Section 103(a) as unpatentable over Bullock et al. as applied to claim 8 and further in view of Fitzgerald et al. (USPN 6,451,717).

The Examiner submits that Bullock is silent as to the fluoropolymers to be used in the treated textile. The Examiner cites Fitzgerald et al. to teach an aqueous emulsion for imparting oil and water repellency to textiles comprising an aromatic blocked isocyanate and fluoropolymer (Abstract). The Examiner further states that the patent teaches the use of fluoropolymers that include perfluoroalkyl groups connected to polyurethane or (meth)acrylate groups (col. 1, lines 60-67). (Meth)acrylate is to include methacrylate, acrylate, or a combination of these groups (col. 1, line 67 – col. 2, line 2). Thus, the Examiner contends that it would have been obvious to a person having ordinary skill in the art to modify the article of Bullock et al. with the fluoropolymers of Fitzgerald et al.

With regard to claim 10, Applicants respectfully rely on the argument presented above with regard to the deficiencies of Bullock et al. Since claim 10 depends indirectly from claim 1, Applicants respectfully contend that the rejection lacks a *prima facie* showing of obviousness because the combination of references fail to disclose expressly claimed elements of Applicants' claimed invention, as previously discussed. Thus, reconsideration and withdrawal of this rejection is earnestly requested.

Claims 1-4, 7, 8, 10 and 11 were rejected under 35 USC Section 103(a) as unpatentable over Linert et al. (US 2003/139521 A1).

The Examiner contends that Linert et al. teach a fluorochemical composition to render a fabric oil and/or water repellent comprising not more than 4% fluoropolymer such as a fluorinated ester, blocked isocyanates, fungicidal agents (Abstract, [0071-73]). The applied patent is silent as to the hydrophobicity of the disclosed crosslinking components. However, as the invention is directed for use as a stain and water repellent textile fabric, the Examiner believes it is reasonable to presume that the crosslinking agents taught by Linert et al. are hydrophobic. The applied patent is also silent as to the incorporation of an antimicrobial agent. However, the Examiner contends that it would have

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been obvious to one having ordinary skill in the art to use an antimicrobial agent in the article of Linert et al. since the article already includes a fungicidal agent.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art (MPEP § 2143.03). Applicants respectfully submit that Linert et al. fail to teach each and every limitation of the invention as recited in the instant claims. For example, Linert et al. fail to teach a fluorochemical-containing soil release component, as recited in claim 1. Additionally, Linert et al. also fail to teach a fluorochemical-containing soil release component selected from the group consisting of acrylate-containing polymers, methacrylate-containing polymers, urethane-containing polymers, and fluorinated esters, as recited in claim 2. Instead, Linert et al. teach polymers that contain perfluorovinyl ethers (title) that have a partially or fully fluorinated backbone (paragraph 0026).

With regard to the rejection of claim 2 specifically, Applicants believe that the Examiner has cited paragraph [0071] of Linert et al. as evidence of a teaching by Linert et al. of fluorinated esters. Applicants respectfully submit that the teaching provided by the reference at paragraph [0071] is not a teaching of fluorinated esters, but rather a teaching that the Linert et al. fluoropolymer may be dispersed in a solution with an organic solvent, such as an ester. Applicants respectfully submit that this is not a teaching of a fluorochemical-containing soil release component such as a fluorinated ester, as taught and claimed by Applicants.

Accordingly, since the cited art fails to teach the limitations as claimed by Applicants in independent claim 1, and since all of the other rejected claims each depend directly or indirectly from this claim, Applicants respectfully submit that the obviousness rejection of claims 1-4, 7, 8, 10 and 11 should not be maintained. Reconsideration and withdrawal of this rejection is earnestly requested.

Double Patenting Rejection:

Claims 1-8, 10 and 11 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7, 24-25, 39-34; 1-70; and 1-21 of copending Application Nos. 10/659,900; 10/785,218; and 10/780,976.

Although the conflicting claims are not identical, the Examiner believes they are not patentably distinct from each other because all of the applications are directed to fluorochemically-treated fabrics.

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Applicants are willing to file terminal disclaimers to obviate this rejection after all other issues of patentability have been resolved.

Conclusion:

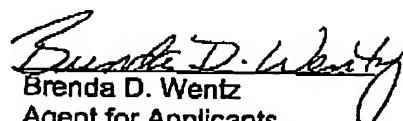
For the reasons set forth above, it is respectfully submitted that all claims now stand in condition for allowance. Should any issues remain after consideration of these Remarks, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

In the event that there are additional fees associated with the submission of these papers, authorization is hereby provided to withdraw such fees from Deposit Account No. 04-0500.

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Respectfully submitted,

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